

Date: August 17, 2011

W.I.: 1542

ABSTRACT

MTC Resolution No. 4029A

This resolution approves a Joint Exercise of Powers Agreement with the Bay Area Toll Authority and acknowledges and approves certain related actions by the Bay Area Toll Authority and the new joint powers authority. Discussion of this action is contained in the Deputy Executive Director, Operations' Memorandum dated August 10, 2011.

Date: August 17, 2011
W.I.: 1542

Re: Approval of Joint Exercise of Powers Agreement with the Bay Area Toll Authority and Acknowledgment and Approval of Certain Related Actions by the Bay Area Toll Authority and the New Joint Powers Authority

METROPOLITAN TRANSPORTATION COMMISSION
RESOLUTION NO. 4029A

WHEREAS, the Metropolitan Transportation Commission (“MTC”) is the regional transportation planning agency for the San Francisco Bay Area pursuant to California Government Code section 66500 et seq.; and

WHEREAS, MTC is a “public agency” as that term is defined in Section 6500 of the California Joint Exercise of Powers Act, consisting of Sections 6500 through 6599.3 of the California Government Code, as amended from time to time (the “Joint Powers Act”), and as such may, pursuant to the Joint Powers Act, enter into a joint exercise of powers agreement with one or more other public agencies; and

WHEREAS, the Bay Area Toll Authority (“BATA”) was created pursuant to Section 30950 of the Streets and Highways Code of the State of California and is a “public agency” within the meaning of Section 6500 of the Joint Powers Act; and

WHEREAS, MTC and BATA intend to enter into a joint exercise of powers agreement pursuant to the Joint Powers Act pursuant to which a joint powers authority (the “Authority”) will be created to plan, acquire, and develop office space and facilities by exercising the common powers of BATA and MTC and the powers separately conferred by law upon the Authority; and

WHEREAS, in order to facilitate the formation of the Authority, there has been prepared and presented to the Authority a proposed form of joint exercise of powers agreement attached as Attachment A to this Resolution, and incorporated herein as though set forth at length (the “Agreement”), between BATA and MTC, to form the Authority; and

WHEREAS, under the Joint Powers Act and other applicable provisions of law and the Agreement, the Authority will be a public entity separate and apart from the parties to the Agreement and the debts, liabilities and obligations of the Authority will not be the debts, liabilities or obligations of MTC or any member of MTC serving on the governing board of the Authority; and

WHEREAS, it is to the advantage of MTC and in the public interest of the area and persons served by MTC for MTC to enter into the Agreement in order to establish the Authority for the purposes herein recited and the additional purposes set forth in the Agreement; and

WHEREAS, BATA proposes to contribute funds, personnel, equipment, and property to the Authority pursuant to the Agreement in order to enable the Authority to accomplish the purposes set forth in the Agreement; and

WHEREAS, BATA proposes to proceed with certain activities pending formation of and action to be taken by the Authority in order to facilitate the accomplishment of the purposes of the Authority set forth in the Agreement; and

WHEREAS, the Association of Bay Area Governments (“ABAG”) and/or the Bay Area Air Quality Management District (the “Air District”) may elect to occupy and/or own a portion of the office space and facilities planned, acquired and developed by the Authority; and

WHEREAS, there have been prepared and presented to MTC a summary of the proposed terms of agreement and statement of principles among MTC, BATA and ABAG (the “ABAG Terms”) and a summary of the proposed terms and statement of principles among MTC, BATA and the Air District (the “Air District Terms”); and

WHEREAS, all acts, conditions and things required by the Constitution and the laws of the State of California to exist, to have happened and to have been performed in connection with the consummation of the Agreement authorized hereby do exist, have happened and have been performed in regular and due time, form and manner as required by law, and MTC is now duly authorized and empowered, pursuant to each and every requirement of law, to authorize the execution and delivery of the Agreement; now, therefore, be it

RESOLVED, that MTC specifically finds and declares that the statements, findings and determinations of MTC set forth in the preambles above and of the documents approved herein are true and correct; and be it further

RESOLVED, that MTC hereby authorizes the Executive Director of MTC and the Chief Financial Officer of MTC, and each of them (each, an “Authorized Representative”), to execute and deliver, and the Secretary of MTC to attest and deliver, the Agreement in substantially the form presented to MTC, with such additions thereto or changes therein as the Authorized Representative executing the same, with the advice of General Counsel to MTC, may require or approve, the approval of such additions or changes to be conclusively evidenced by the execution and delivery of the Agreement; and be it further

RESOLVED, that MTC hereby acknowledges and approves BATA's proposed contribution to the Authority of up to \$179,776,515.00 pursuant to Section 7 of the Agreement for purposes of acquiring and developing an office facility at the location described at this meeting (including a deposit of funds for and on behalf of the Authority in an escrow for the acquisition of property by the Authority) and BATA's proposed contribution to the Authority from time to time of personnel, equipment and property of BATA that may be necessary or appropriate to assist the Authority in accomplishing the purposes stated in the Agreement; and BATA's proposed taking of such further actions pending formation of and action to be taken by the Authority as may be necessary or desirable in order to facilitate the accomplishment of the purposes of the Authority set forth in the Agreement, including without limitation, negotiating, executing and delivering a purchase agreement and opening a purchase escrow for the office space and facilities described at this meeting; conducting (or hiring third parties to conduct) due diligence in connection with such acquisition; retaining architects or planners for the development of such office space and facilities; and negotiating final ABAG Terms and Air District Terms; and be it further

RESOLVED, that MTC hereby authorizes the Authority's consummation of any such activities initiated by BATA, including without limitation the Authority's substitution for BATA in such escrow and purchase arrangements and the Authority's taking title to any office space and facilities the acquisition of which has been initiated by BATA; and, be it further

RESOLVED, that MTC hereby authorizes and directs the Authorized Representative to negotiate, execute and deliver documentation deemed appropriate by such Authorized Representative between MTC and the Authority regarding MTC's use and occupancy of the new

office space or facilities that may be necessary and convenient to accomplish the purposes of this resolution; and, be it further

RESOLVED, that the officers and agents of MTC are hereby authorized and directed to take all further actions necessary and convenient to establish the Authority and that all actions heretofore taken by the members of MTC, committees of MTC, and officers and agents of MTC with respect to the Agreement and the formation of the Authority are hereby acknowledged, ratified, and approved; and, be it further

RESOLVED, that this Resolution shall take effect from and after its adoption.

METROPOLITAN TRANSPORTATION COMMISSION

Adrienne J. Tissier, Chair

The above resolution was entered into by the Metropolitan Transportation Commission at a special meeting of the Commission held in Oakland, California, on August 17, 2011.

Date: August 17, 2011
W.I.: 1542

MTC Resolution No. 4029A
Attachment A

JOINT EXERCISE OF POWERS AGREEMENT

between

METROPOLITAN TRANSPORTATION COMMISSION

and

BAY AREA TOLL AUTHORITY

dated August __, 2011

Creating the

BAY AREA HEADQUARTERS AUTHORITY

JOINT EXERCISE OF POWERS AGREEMENT

This JOINT EXERCISE OF POWERS AGREEMENT, dated August __, 2011 (“Agreement”), is between METROPOLITAN TRANSPORTATION COMMISSION (“MTC”), and BAY AREA TOLL AUTHORITY (“BATA”).

WITNESSETH

WHEREAS, MTC is responsible under the Metropolitan Transportation Commission Act (California Government Code section 66500 et seq.) for comprehensive regional transportation planning and for other activities that require office space and facilities for its commission and staff, and MTC is authorized by California Government Code section 66506 to do any and all things necessary to carry out the purposes of the Metropolitan Transportation Commission Act, including the acquisition of such office space and facilities; and

WHEREAS, BATA is responsible under California Streets and Highways Code section 30950 et seq. for the administration of all toll revenues from state-owned toll bridges within the geographic jurisdiction of MTC and for other activities that require office space and facilities for its commission and staff, and BATA is authorized by California Streets and Highways Code section 30951 to do all acts necessary or convenient for the exercise of its powers, including the acquisition of such office space and facilities; and

WHEREAS, the governing bodies of MTC and BATA have authorized MTC and BATA, respectively, to jointly exercise their common powers in the manner set forth in this Agreement;

WHEREAS, MTC and BATA have elected to create a joint exercise of powers entity, Bay Area Headquarters Authority (the “Authority”), for the purposes stated, and to exercise jointly their powers described in, this Agreement;

NOW, THEREFORE, MTC and BATA, for and in consideration of their mutual promises in this Agreement, do agree as follows:

SECTION 1. PURPOSE

This Agreement is made pursuant to Chapter 5 of Division 7 of Title 1 of the Government Code of the State of California (Sections 6500-6599.2) as the same may be amended from time to time (the “Act”) to provide for the joint exercise of powers common to MTC and BATA and the powers separately conferred by law upon the Authority for the purpose of planning, acquiring, and developing office space and facilities and undertaking related activities, as more fully described in Section 4. The Authority will fulfill the purposes of this Agreement by undertaking the activities described in Section 4 in accordance with the Act and all other applicable laws.

SECTION 2. TERM

This Agreement becomes effective on the date it is executed on behalf of both parties and it will continue in effect until December 31, 2061, unless extended or earlier terminated by written agreement of MTC and BATA, provided that this Agreement shall not terminate or be terminated until the date on which all liabilities incurred by the Authority shall have been paid or provided for and all money or other assets of the Authority shall have been transferred to BATA as provided in Section 7.

SECTION 3. AUTHORITY

A. Creation of Authority

There is hereby created pursuant to the Act an authority and public entity to be known as “Bay Area Headquarters Authority” (the “Authority”). The Authority is a public entity and is separate from MTC and BATA. The debts, liabilities, contracts and other obligations, employees, and agents of the Authority shall not constitute debts, liabilities contracts, obligations, employees or agents of MTC or BATA.

Within 30 days after the effective date of this Agreement, or any amendment hereto, the Authority will cause a notice of this Agreement or amendment to be prepared and filed with the office of the Secretary of State of the State of California in the manner set forth in Section 6503.5 of the Act and file a copy of this Agreement and any amendment with the Controller of the State of California in accordance with Section 6503.6 of the Act.

B. Governing Board

The Authority shall be administered by a governing board (the “Board”), which shall consist of six members: the chair and the vice chair of MTC; the chair and the vice chair of the BATA oversight committee; and the chair and the vice chair of the MTC programming and allocations committee. If either the BATA oversight committee or the MTC programming and allocations committee is reconstituted, the succeeding committee shall be responsible for the respective appointments to the Board. The members of the Board shall serve without compensation, but shall receive reimbursement for actual and necessary expenses incurred in connection with the performance of their duties. However, in lieu of this reimbursement for attendance at Authority or committee meetings, each member may receive a per diem of one hundred dollars (\$100), but not to exceed a combined total of five meetings in any one calendar month, plus the necessary traveling expenses as may be authorized by the Authority.

C. Meetings of Board

(1) Regular Meetings and Special Meetings. The Board shall hold at least one regular meeting each year, and, by resolution, may provide for the holding of regular meetings at more frequent intervals. The initial meeting of the Board shall be the first regular meeting of the Board and shall occur on the date of the first MTC meeting to occur after the date of this Agreement. The date, hour and place of each subsequent regular meeting shall be fixed

by resolution of the Board but may be changed by the chair or vice chair of the Authority upon not less than 48 hours prior notice in order to coordinate the date, hour and place of the meeting with the date, hour and place of an MTC meeting or a BATA meeting. Special meetings of the Board may be called by the chair or the vice chair of the Authority or by a majority of the members of the Board on the date and at the hour and place fixed by notice to all of the members of the Board.

(2) Legal Notice. All regular and special meetings of the Board shall be called, noticed, held and conducted subject to the provisions of the Ralph M. Brown Act (codified at California Government Code sections 54950 and following).

(3) Minutes. The secretary of the Authority shall cause minutes of all meetings of the Board to be kept and shall, as soon as practicable after each meeting, cause a copy of the minutes to be forwarded to each member of the Board and to MTC and BATA.

(4) Quorum. A majority of the members of the Board shall constitute a quorum for the transaction of business.

D. Officers; Duties

(1) The chair of MTC shall be the chair of the Authority. The vice chair of MTC shall be the vice chair of the Authority. The Board shall by resolution appoint a secretary of the Authority.

(2) The Chief Financial Officer of MTC is hereby designated as Treasurer of the Authority. The Treasurer is designated as the depository of the Authority to have custody of all the money of the Authority, from whatever source, and, as such, shall have the powers, duties and responsibilities specified in Section 6505.5 of the Act.

(3) The Chief Financial Officer of MTC is hereby designated as Auditor of the Authority, and, as such, shall have the powers, duties and responsibilities specified in Section 6505 and Section 6505.5 of the Act. The Auditor shall draw checks to pay demands against the Authority when the demands have been approved by the Authority.

(4) MTC shall determine the charges, if any, to be made against the Authority for the services of the Treasurer and Auditor. MTC may provide staff for the Authority and shall determine the charges to be paid by the Authority for such services.

(5) The Treasurer and Auditor of the Authority are designated as the public officers or persons who have charge of, handle, or have access to any property of the Authority, and such officers shall file an official bond as required by Section 6505.1 of the Act in the amount of \$25,000.

(6) The Treasurer of the Authority is hereby authorized and directed to prepare or cause to be prepared a report in writing on the first day of July, October, January, and April of each year to the Board and the Authority, which report shall describe the

amount of money held by the Treasurer and Auditor of the Authority for the Authority, the amount of receipts since the last such report, and the amount paid out since the first such report.

(7) The Executive Director of MTC is hereby designated as Executive Director of the Authority.

(8) The General Counsel for MTC shall be and act as General Counsel to the Authority.

(9) The Board shall have the power to appoint such other officers and employees as it may deem necessary.

E. Conflict of Interest Code.

MTC's conflict of interest code shall apply to the Authority.

F. Rules and Regulations.

The Authority may adopt, from time to time, by resolution of the Board, such rules and regulations for the conduct of its meetings and affairs as the Board determines are necessary or convenient.

SECTION 4. POWERS

The Authority will have and may in its discretion exercise the powers common to MTC and BATA, and the powers separately conferred by law upon the Authority, to plan, acquire, and develop office space and facilities and undertake related activities as described herein. The Authority is hereby authorized to exercise all of the powers enumerated in Sections 6508 and 6588 of the Act or implied from those sections, and to do all acts necessary for the exercise of such powers, including, but not limited to, any or all of the following: to enter into contracts, including contracts providing for public or private sector entities to plan, acquire and develop the Authority's office space and facilities; to employ agents and employees; to acquire, construct, provide for maintenance and operation of, or maintain and operate, any buildings, works or improvements; to acquire, hold or dispose of property wherever located, including the lease or rental of property; to incur debts, liabilities or obligations (except as provided below); to receive gifts, contributions and donations of property, funds, services and other forms of assistance from persons, firms, corporations and any governmental entity; to sue and be sued in its own name; and generally to do any and all things necessary or convenient to the purpose stated in Section 2 and this Section 4; provided, however, that, notwithstanding Article 2 and Article 4 of the Act, the Authority may not issue bonds or other forms of indebtedness or notes or certificates of participation or lease-purchase agreements or any other securities.

SECTION 5. MANNER OF EXERCISING POWERS AND TERMINATION
OF POWERS

The Authority shall exercise its powers (such as its procurement and other contracting powers) in the same manner as BATA exercises its powers, and the Authority may continue to exercise its powers until the end of the term of this Agreement provided in Section 2.

SECTION 6. FISCAL YEAR

Unless and until changed by resolution of the Board, the fiscal year of the Authority shall be the period from July 1 of each year to and including the following June 30, except for the first fiscal year which shall be the period from the date of this Agreement to the following June 30.

SECTION 7. CONTRIBUTIONS AND ADVANCES

It is understood and agreed that neither MTC nor BATA has any obligation to make advances or contributions to the Authority. At its sole discretion, BATA may contribute funds to the Authority from time to time and may allow the use of its personnel, equipment or property (including personnel, equipment or property BATA shares with MTC) as contributions to the Authority. MTC and BATA hereby agree that, in consideration of such contributions by BATA, any funds held by the Authority that are determined by the Authority to be in excess of the Authority's then current capital and operating needs shall be paid to BATA and may be used by BATA for any lawful purpose, free and clear of the restrictions of this Agreement. After termination of this Agreement pursuant to Section 2, any money and other assets in possession of the Authority shall be paid to BATA.

SECTION 8. ACCOUNTS AND REPORTS

(1) Books and Records

All funds of the Authority shall be strictly accounted for in books of account and financial records maintained by the Authority, including a report of all receipts and disbursements. The Authority shall establish and maintain such funds and accounts as may be required by generally accepted accounting principles. The books and records of the Authority shall be open to inspection at all reasonable times by MTC and BATA.

(2) Audits

The Auditor of the Authority shall cause an independent audit to be made of the books of accounts and financial records of the Authority in compliance with the requirements of the Act. Any costs of the audit, including contracts with, or employment of, certified public accountants or public accountants in making an audit pursuant to this Section, shall be borne by the Authority and shall be a charge against any unencumbered funds of the Authority available for that purpose.

(3) Audit Reports

The Treasurer of the Authority, as soon as practicable after the close of each Fiscal Year but in any event within the time necessary to comply with the requirements of the Act shall file a report of the audit performed pursuant to paragraph (2) of this Section 8 as required by the Act and shall send a copy of such report to public entities and persons in accordance with the requirements of the Act.

SECTION 8. FUNDS

The Treasurer of the Authority shall receive, have the custody of and disburse Authority funds pursuant to accounting procedures approved by the Board and shall make the disbursements required by this Agreement or otherwise necessary to carry out the provisions and purposes of this Agreement.

SECTION 9. NOTICES

Notices and other communications hereunder to the parties shall be sufficient if delivered to the clerk or secretary of the governing body of each party.

SECTION 10. INDEMNIFICATION

To the full extent permitted by law, the Board may authorize indemnification by the Authority of any person who is or was a director, officer, employee or other agent of the Authority, and who was or is a party or is threatened to be made a party to a proceeding by reason of the fact that such person is or was such a director, officer, employee or other agent of the Authority, against expenses, judgments, fines, settlements and other amounts actually and reasonably incurred in connection with such proceeding, if such person acted in good faith and in a manner such person reasonably believed to be in the best interests of the Authority and, in the case of a criminal proceeding, had no reasonable cause to believe the conduct of such person was unlawful and, in the case of any action by or in the right of the Authority, acted with such care, including reasonable inquiry, as an ordinarily prudent person in a like position would use under similar circumstances.

SECTION 11. IMMUNITIES.

All of the privileges and immunities from liabilities, exemptions from laws, ordinances and rules, all pension, relief, disability, workers' compensation, and other benefits which apply to the activity of officers, agents, employees or other representatives of MTC or BATA when performing their respective functions within the territorial limits of their public agency, shall apply to them to the same degree and extent while engaged as a director, officer, agent, employee or other representative of the Authority or while engaged in the performance of any of their functions or duties under the provisions of this Agreement whether within or outside of the boundaries of MTC or BATA.

SECTION 12. SEVERABILITY

Should any part, term, or provision of this Agreement be decided by the courts to be illegal or in conflict with any applicable law or otherwise be rendered unenforceable or ineffectual, the validity of the remaining parts, terms or provisions of this Agreement shall not be affected.

SECTION 13. SUCCESSORS; ASSIGNMENT

This Agreement shall bind and inure to the benefit of the successors of the parties. Neither party may assign any right or obligation under this Agreement without the prior written consent of the other.

SECTION 14. AMENDMENT OF AGREEMENT

This Agreement may be amended only by an agreement executed by MTC and BATA.

SECTION 15. MISCELLANEOUS

Section headings are for convenience and are not to be construed as modifying or governing the language in the section. Whenever this Agreement requires any consent or approval, consent or approval shall not be unreasonably withheld. Wherever this Agreement refers to actions to be taken by MTC or by BATA, those actions may be exercised through the officers, staff, or employees of MTC or BATA, as the case may be, in the manner provided by law or regulation.

IN WITNESS WHEREOF, MTC and BATA have caused this Agreement to be executed and delivered on August __, 2011 by their proper and duly authorized officers.

METROPOLITAN TRANSPORTATION COMMISSION

By_____

BAY AREA TOLL AUTHORITY

By_____